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FILED
01/06/2023
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0668-R-2022
Lambert, Kathryn
9.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Bret Garretson; Donna Moyer

OBJECTORS: United States of America (USDA Forest Service)

CASE 43B-0668-R-2022
43B 23579-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The United States of America (USDA Forest Service) objected to Bret Garretson and Donna Moyer claim 43B 23579-00. On October 17, 2022 the parties filed a Stipulation To

Resolve Objections. The Stipulation is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree includes the following standard text to describe the flow rate:

A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE
CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A
DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT
HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

This remark should be removed. The flow rate should be 5.00 gpm.

2. The Preliminary Decree states that the means of diversion is livestock direct from source. The means of diversion should be pipeline.

CONCLUSION OF LAW

The settlement filed by the parties is sufficient to contradict and overcome the prima facie claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 23579-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: DONNA MOYER
260 LUCCOCK PARK RD
LIVINGSTON, MT 59047 9125

BRET GARRETSON
260 LUCCOCK PARK RD
LIVINGSTON, MT 59047 9125

Priority Date: AUGUST 12, 1961

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: 5.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF PINE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWNW	17	4S	10E	PARK

Period of Diversion: MAY 1 TO NOVEMBER 1

Diversion Means: PIPELINE

Period of Use: MAY 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESENE	18	4S	10E	PARK